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10/673,383

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Bharat T. Doshi

Doshi 57-6-22-18-34

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07/30/2009

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EXAMINER

BATES, KEVIN T

ART UNIT

PAPER NUMBER

2456

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Response to Amendment

This Office Action is in response to a communication received on May 18, 2009.

The Information Disclosure Statements filed March 2, 2009 and July 22, 2009 have been considered.

Claims 1, 11, 18, and 19 are currently amended.

Claims 1 and 4-21 are pending in this application.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 11 is directed towards an apparatus, it is clear from the specification (¶82) that the claimed limitations are directed toward a software application. Software applications are not patentable subject matter so the claim is directed towards non-patentable subject matter.

Claims 1, 4-10, 14-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The method claims result in no transformation of an article from one state to another, nor is the claimed method steps tied to a particular machine. The limitation of a "apparatus-implemented method" is a mere field-of-use limitation and does not make the claimed method statutory.

Response to Arguments

Applicant's arguments, filed May 18, 2009, with respect to 35 USC §103(a) have been fully considered and are persuasive. The §103(a) of claims 1, 5-6, 8, 11, and 13-15 has been withdrawn.

Applicant's arguments regarding the 35 USC §101 rejections have been fully considered but they are not persuasive.

Regarding claims 11-13, the applicant argues that the amendment from computer manager to apparatus limits the claim to hardware embodiments. The examiner disagrees; the term "apparatus" has not antecedent basis in the specification, so the term is considered in light of the context of the claim and of one of ordinary skill in the art. The claim limitations are directed toward functional steps which as described by the specification includes can be performed entirely in software. There are no limitations in the claim which force these steps to be performed or stored on hardware, thus the claim still includes embodiments which is software only.

Regarding claims 1, 18, and 19, the applicant argues that the limitation apparatus-implemented method ties the method claim to a particular machine. The examiner disagrees; the method claim is directed toward the process of computing appropriate network paths. Those limitations are directed to pure computation and provide no interrelatedness or inherent tie to the actual network the paths are being computed, thus the only possible tie to any hardware or machine appears in the preamble. By stating the method is an "apparatus-implemented method" in the preamble, the applicant is merely asserting how the apparatus is intended to be implemented. It appears from that context that the apparatus is what is intended to be

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used to implement the apparatus, but provides no actual tie between the claimed limitations and the apparatus. The intended use of a method does not provide any actual limitations on the method, thus the method claim has no actual tie to the apparatus, thus it is not statutory.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Pat. Pub. 2004/0004938 by Buddhikot et al. Buddhikot teaches a system of primary and restoration paths where link cost is calculated in terms of the capacity reserved for primary paths and residue capacity reserved for restoration paths, but fails to calculate the cost in terms of the number of primary services that can be added in unit format. See ¶52-54 and ¶83-86.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEVIN BATES whose telephone number is (571)272-3980. The examiner can normally be reached on M-F 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KEVIN BATES/

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Primary Examiner, Art Unit 2456